

GLOBAL INFORMATION SOCIETY WATCH 2012

THE INTERNET AND CORRUPTION
Transparency and accountability online



Global Information Society Watch

2012



Steering committee

Anriette Esterhuysen (APC)
Loe Schout (Hivos)

Coordinating committee

Karen Banks (APC)
Monique Doppert (Hivos)
Valeria Betancourt (APC)

Project coordinator

Valeria Betancourt

Editor

Alan Finlay

Assistant editor

Lori Nordstrom

Publication production

Mallory Knodel

Proofreading

Valerie Dee
Lori Nordstrom

Graphic design

Monocromo
info@monocromo.com.uy
Phone: +598 2 400 1685

Cover illustration

Matías Bervejillo

Financial support provided by

Humanist Institute for Cooperation with Developing Countries (Hivos)
Swedish International Development Cooperation Agency (Sida)



Global Information Society Watch

Published by APC and Hivos
2012

Creative Commons Attribution 3.0 Licence
<creativecommons.org/licenses/by-nc-nd/3.0/>
Some rights reserved.

ISSN: 2225-4625
ISBN: 978-92-95096-85-1
APC-201301-CIPP-R-EN-DIGITAL-176



EsLaRed

Sandra L. Benítez and Lourdes González-Pietrosemoli
www.eslared.org.ve

Introduction

This report analyses the Venezuelan government's public policies regarding e-government and the implementation of tools that facilitate access to public information through the internet. This is a way to increase efficiency in the management of state enterprises, improve services and provide more transparent accountability that will enable citizens to exercise their right to democratic participation and to combat corruption. It specifically examines the case of the state food company PDVAL,¹ which in recent years has allegedly committed corruption that shocked the public both nationally and internationally. This report considers e-government in Venezuela for the period 2010-2011, and the legal framework concerning anti-corruption actions in public management, control of public expenditure, and citizens' access to government information. It also analyses the government measures applied in the case of PDVAL's alleged corruption, and comments on the public's reaction in different media (debates, reports, social networking and digital media) in their attempt to report what they judged as inefficient or fraudulent management of public goods. Finally, the report proposes a series of actions and recommendations about transparency and accountability in Venezuela.

Political background

Even though there is no law fully regulating access to public information in Venezuela, a draft Law on Transparency and Access to Public Information² has been recently developed and was to be discussed during 2012 in the National Assembly.³ Also, the National Constitution,⁴ in its articles 28, 31, 51, 57, 143

and 325, provides for the right of all people to access public information.

Of utmost importance to the PDVAL case are the Law Against Corruption,⁵ the Law on Administrative Procedures,⁶ the Law on Administrative Procedures Simplification⁷ and the Organic Law on Public Administration.⁸ These laws, which are in force, consider transparency a leading principle and establish the use of new technologies for public administration and relationships with citizens. In fact, they urge governmental agencies to develop portals and websites containing relevant information for citizens and to promote e-government as a way to achieve transparency in the management of information.

At present, the E-Government Act⁹ approved by the National Assembly¹⁰ in 2011 dictates the guidelines for the use of information and communications technologies (ICTs) in public administration. There are also laws and ordinances applicable to local, regional and municipal governments that promote transparency in information.¹¹

Venezuela recognises most international laws that proclaim the freedom to seek, receive and impart information and act against corruption.¹²

Finally, PDVAL has been under the Ministry of People's Power for Food (MINPAL)¹³ since 2010, and was created in 2007 as a subsidiary of the state-run oil company PDVSA.¹⁴

The case of PDVAL

Between 2010 and 2011, about 170,000 tons of spoiled food was found in containers located in the port of Puerto Cabello, Venezuela. This food, earmarked for distribution in state-run supermarkets

1 Productora y Distribuidora Venezolana de Alimentos

2 asambleavisible.files.wordpress.com/2011/06/proyecto-de-ley-org3a1nica-de-transparencia-y-acceso.pdf

3 www.asambleanacional.gov.ve/index.php?option=com_content&view=article&id=37608%3Acomision-de-contraloria-proponen-tres-instrumentos-juridicos-para-este-ano&catid=1%3Alatest-news&Itemid=246&lang=es

4 www.asambleanacional.gov.ve/index.php?option=com_content&view=article&id=24728&Itemid=238&lang=es

5 www.asambleanacional.gov.ve/index.php?option=com_leyesficha&hidId=detalleley&Itemid=213&idley=850&lang=es

6 www.tsj.gov.ve/legislacion/lopa.html

7 www.uc.edu.ve/diuc/pdf/LeySobreSimplificaciondeTramitesAdministrativos.pdf

8 web.laoriental.com/Leyes/Lo10N/Lo10nT1Capo.htm

9 www.cavedatos.org.ve/download/cdt_367.pdf

10 www.asambleanacional.gov.ve/index.php?option=com_content&view=article&id=33409:realizaran-jornadas-de-consulta-sobre-la-ley-de-infogobierno&Itemid=50

11 www.alcaldiamunicipiosucre.gov.ve/contenido/wp-content/uploads/2010/08/Resumen-Ley-de-Acceso-a-la-Informacion.pdf

12 www.ipys.org.ve/media/24534/manual_aip_venezuela.pdf

13 www.minpal.gov.ve

14 www.pdvsa.com

in urban and rural areas, was packed in 1,197 containers. It had reached its expiration date, and was therefore unacceptable for human consumption. At the time, officials explained the spoiling of the food as inefficient management by PDVAL, which allegedly imported greater amounts of food than it could manage to distribute. However, non-governmental media – traditional and digital – have analysed it as an obvious case of corruption in which public managers deliberately imported food that was nearly or already expired for embezzlement purposes.

This scandal was in apparent contradiction to existing laws and regulations in the country stating the obligation of transparency in the management of government agencies, and the rules urging the use and promotion of ICTs as tools for the dissemination of information, democratic participation of citizens and control of the potential corruption in their respective governments.

However, examining the effectiveness and transparency of e-government in the management of the food company PDVAL, we find some revealing facts:

- MINPAL has an institutional portal with official information about the ministry and nine different associated agencies¹⁵ involved in the food marketing chain.¹⁶ This is in accordance with Article 27 of the Law of Info-Governance, according to which all governmental agencies are obliged to publish on their official websites information about their mission, organisation, procedures, relevant regulations, documents of interest to people, management reports, operational plans and annual financial reports and accounts.
- However, most agencies under MINPAL do not display their annual financial reports and accounts on their portals. In the case of SADA,¹⁷ the government agency responsible for food storage, a password is required to access the administrative system. This violates the right to social control established in articles 62 and 142 of the Venezuelan Constitution. Moreover, it contradicts the approved national policies about the strategic use of ICTs as described in the Simon Bolívar National Plan, and in the Telecommunications, Informatics and Postal Services National Plan.

- MINPAL's main site only displays an annual financial report and accounts for 2007.¹⁸ Besides this, information is so scarce that it precludes a serious analysis on management of public resources. The report on 2008 has an inoperative link and MINPAL only shares information about the management of the agencies attached to the ministry.
- The government's annual financial report does not display information about MINPAL, and the link to MINPAL is missing.
- The PDVAL official site shows no records of operational and financial plans, and does not have annual financial reports for 2010¹⁹ and 2011.²⁰

This lack of transparency, paucity or absence of official information which was strongly suggestive of the ineffectiveness of the e-government programme in the country led the citizen media to discuss the PDVAL case as one of patent corruption, in which unscrupulous officials deliberately imported expired food at lower prices for profit. In fact, the Venezuelan Programme of Education-Action in Human Rights (PROVEA)²¹ demanded that the government and National Assembly²² guarantee the “delivery and access of reports and accounts of all public institutions of the country (and the application of) penalties for officials who fail to comply with this obligation.”

At the same time, public opinion started to be heard in digital forums, in the independent press, on non-governmental radio and television, and on blogs,²³ websites and social media (Twitter and Facebook), all of which were reporting on PDVAL frequently. In a very short time the scandal was known worldwide,²⁴ which pressured the government to investigate. The results of the investigation were:

- In 2009, PDVSA's auditor general,²⁵ Jesus Villanueva, acknowledged in a confidential memorandum that poor quality food was imported, and wrote about the extent of the financial disaster of PDVAL food imports. He also reported about overpriced payments and

15 www.minpal.gob.ve/index.php?option=com_content&task=view&id=6&Itemid=13

16 The marketing chain encompasses production, transportation, storage, distribution and final sale.

17 sada.gob.ve/administrativo/admin/index.php

18 www.minpal.gob.ve/index.php?option=com_content&task=view&id=9&Itemid=27

19 www.derechos.org.ve/memoria-y-cuenta/memoria-y-cuenta-2010

20 www.derechos.org.ve/documentos-oficiales/memoria-y-cuenta-2011

21 www.noticierodigital.com/2012/02/provea-exige-al-ejecutivo-difundir-publicamente-memoria-y-cuenta-de-las-instituciones-oficiales

22 *Ibid.*

23 www.democraticunderground.com/11081638

24 es.wikipedia.org/wiki/Caso_PDVAL

25 www.reportero24.com/2011/03/auditor-de-pdvsa-alerta-corrupcion-en-importaciones-de-pdval

the purchase of expired food or products that never arrived, which led to losses amounting to several hundred million dollars. The memo also mentions the haphazard processes that governed importing and the lack of coordination inside the ports.

- In May 2010, at the request of the Attorney General,²⁶ the 2009 general manager and chief operating officer of PDVAL, Ronald Flores and Vilyeska Betancourt, were arrested.
- On 28 August 2010, the Comptroller General of the Republic (CGR) analysed 37 containers of food out of 305 that had been abandoned at customs at the ports of Puerto Cabello and La Guaira. Inspections by the National Institute for Agricultural Health and the Autonomous Service of Sanitary Control determined that the food in the containers had expired or had near-expiration dates, and some had signs of decomposition.
- Evident differences between the inventories of the warehouses and those managed by the company were also reported, and detailed information about purchase orders and the location and condition of the food received revealed the inefficiency of PDVAL management.
- On 30 March 2011, Comptroller General Clodosbaldo Russian²⁷ openly criticised PDVAL management, since it had proceeded “without regard to strictly legal and technical criteria.”
- In November 2011 the Justice Department and the National Office of the Republic granted parole to the accused in the PDVAL case. At the same time, Deputies Neidy Rosal²⁸ and Aura Montero²⁹ complained to the National Assembly about the deferrals and delays by MINPAL in the application of penalties in the PDVAL case. They also asked for a review of the processes and for the intervention of the president of the Supreme Court of Justice and the Attorney General’s Office, while requesting further investigation of new cases³⁰ of spoiled food in 2012. At present, the PDVAL accused are free.

26 informe21.com/actualidad/detenidos-dos-ex-directivos-pdval-sus-presunta-vinculacion-alimentos-descompuesto

27 informe21.com/clodosbaldo-russian/clodosbaldo-russian-pdval-importo-comida-%E2%80%9C-criterio-legal-tecnico

28 www.diariolacosta.com/detalles/Detenidos-por-caso-Pdval-fueron-dejados-en-libertad

29 www.s1.acn.com.ve/portal/politica/item/45721-diputadas-de-prove-solicitan-a-la-an-para-que-investigue-las-denuncias-realizadas-en-el-caso-de-pdval

30 noticierovenevision.net/nacionales/2011/noviembre/9/1123=diputadas-de-carabobo-piden-seguir-investigando-pdval-ante-la-aparicion-de-mas-comida-descompuesta

The PDVAL case reveals important facts:

- Even though the country has excellent laws and regulations concerning an efficient e-government system and the role of ICTs as a tool for citizen control of corruption, there is no enforcement of these laws and norms. This can be seen by the fact that neither the PDVSA nor MINPAL (to which PDVAL reported) displayed the due information on their portals as established by MINPAL regulations.³¹
- Social media have been crucial to force the government to investigate cases of corruption and embezzlement as provided by the constitution.
- When laws do not coexist with law enforcement, then e-government, access to information and democratic participation remain on paper only.

Conclusions

In the period 2008 to 2010, PDVAL was a subsidiary of PDVSA, and from 2010 the government placed it under MINPAL’s jurisdiction, alleging mismanagement on PDVSA’s part. However, MINPAL and its agencies do not comply with the provisions of the E-Government Act. We are faced with a contradiction between laws that promote digitisation and access to information through the internet, and government agencies that violate the very fundamental principles of e-government being promoted. This inconsistency goes beyond the case before us. Decree 825, for example, stipulates the use of the internet for e-government purposes, but the subsequent Decree 6449 defines payments for internet use in the public sector as “luxury spending”. At present, internet expenditures by public and private universities require the approval of the state vice president.

Even though after nearly 18 months since the allegations discussed above the Venezuelan government has not issued sanctions against the accused, the PDVAL case demonstrates how digital media, social networks and virtual communities can play a leading role in formulating public allegations in corruption cases, which then become legal matters.

PDVAL is an example of the level of corruption seen nowadays in Venezuela, a phenomenon that continues to result in shocked national and international opinion. It is also evidence of a lack of transparency and accountability by the government in the use of public funds, and, in particular, the failure in the implementation of

31 www.minpal.gob.ve/index.php?option=com_content&task=view&id=70&Itemid=56

the state's e-government programme. These factors adversely affect the quality of life of citizens and violate constitutional laws.

Action steps

Government agencies

- Deploy efficient e-government processes in public institutions as a way to ensure transparency and accountability.
- Be rigorous in the implementation and enforcement of legislation to promote the control, supervision, monitoring and auditing of the use and management of public assets.
- Monitor the use of funds for the establishment of e-government systems that ensure access to information concerning government agencies.
- Demand that judicial bodies streamline the processes that handle corruption cases, particularly those that threaten the country's food security.
- Maintain a separation of powers in order to facilitate transparent judicial processes when it comes to public administration.

NGOs

- Join forces to report the difficulties encountered in accessing public information to national and international entities.
- Demand sanctions for public institutions that violate laws designed to promote social control.
- Raise allegations of corruption before impartial national and international bodies that will guarantee the punishment of those responsible.

Citizens

- Secure their presence and participation through using social media and demand that the government have a coherent understanding of the role that ICTs should play in a democratic society: as a tool for ordinary people to exercise social control over their governments and participate in real decision making to improve their quality of life. ■